Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

CARROL STATEN,

Petitioner,

v.

TOGO D. WEST, JR., Secretary,
Department of Veterans Affairs,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Veterans Affairs

PETITION FOR WRIT OF CERTIORARI

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55pp

QUESTION PRESENTED

Whether the veteran had presented enough material considering the exceptional and unusual nature of the two radiation exposure accidents which he has claimed occurred did occur to support a well-grounded claim? See App. 33, 34, 35, 36.

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OPINIONS BELOW AND JURISDICTION

Petitioner hereby requests this court to review issues to which he raises concerning the denial decision issued by the Board of Veterans Appeals, BVA Docket No. 92-13049 and the United States Court of Veterans Appeals Vet. Appl. No. 94-0630, concerning his claim filed June 26, 1990. All references in brackets as [R-583] are references to BVA Claim File.

The file record for the above is represented by 583 pages which are numbered and assembled in chronological order starting with number 5 and continues through page 583.

Appellant further pursued his claim to the United States Court of Appeals for the Federal Circuit Docket No. 98-7015; this claim was denied for lack of jurisdiction. He then requested permission to submit new material and requested a reconsideration of his case. The denial for this action was received on April 26, 1999. The file for this action is represented by 285 pages, starting with page number 1001 and ending with page number 1286.

ORDINANCES AND REGULATIONS INVOLVED

U.S. Air Force T.O. 31-1-141-1

38 C.F.R. Ch. 1 [7-1-90], § 3.311(b)

38 C.F.R. Ch. 1 [7-1-90], § 3.311(d)

38 C.F.R. Ch. 1 [7-1-90], § 4.97

STATEMENT OF THE CASE

Exceptional and Unusual Radiation Exposure Overview

The veteran contends that his exposure to radiation (as defined in T.O. 31-1-141-1) is an exceptional and unusual event as evidenced by the radiation scar patterns on his hands (R-455) and scar tissue in the lungs (R-24), liponas (soft tissue problems) and sinus problem correlate to the description of hazards stated in U.S. Air Force, T.O. 31-1-141-1 (R-319 and 325) and the lifelong health record presented to the VARO. Due to the late term effects of these injuries, on certain conditions these are the only evidences available; also, considering that it was common practice for the military services not to record radiations, deliberate and accidental, exposure in the late 40's and early 50's. Continuity of health problems, especially the sinusitis, bronchitis, and (soft tissue problems) lipomas. Significant head and body pain are also continuous and documented in the record. The calcified granuloma (R-24) diagnosis as noted on his military service medical record is probably evidence of injury from breathing radiation contaminated particles, which could have contributed to his sinusitis and bronchitis problem.

The military records report extensive physical examinations in August and September (R-25, 26, 27, 28, 29) of 1955 reports and continuing on to this date with increased numbers.

Isn't it conspicuously suspicious that the tissue problems in total are in the impingment areas of muscle systems, being wrist, elbow, shoulder, and neck

beginning at the right hand and ending in the right side of the head.

REASONS TO GRANT PETITION FOR WRIT OF CERTIORARI

General

The veteran has presented enough material considering the exceptional and unusual nature of the two accidents which he has claimed occurred did occur to support a well-grounded claim.

The veteran raises the issue the Veterans Administration (VA) failed to fulfill its obligation to assist the veteran in building his claim of service connection. Initially, he claimed that his multiple health problems (R-69-72), sinusitis, bronchitis, soft tissue (lipomas) problems were caused from working in a radiation environment (R-67 item 24), last paragraph (R-71), first and last paragraph (R-72), increased pain, last paragraph (R-79-92), summary of radiation exposure (R-72), medical records (R-93-130). The above is all in support of his claim, denied on 8/16/90 (R-165 & 166) followed by Statement in Support of Claim, Form 21-4138, 8/15/90 (R-171).

The veteran submitted a three-page resume of his (R-174) working career; however the last two pages are not in the BVA claim file record. The front page only covers the period 4/86 to that present time. It is asserted that his then service representative, the American Legion, or the VARO removed the last two pages from the record. These two pages are very important because they cover thirty-seven years of his working life and ten job changes.

These two pages were essential to the VARO getting a fair and comprehensive understanding of the effect of his injuries on his working career.

In September 1990, he submitted several (R-218-222) affidavits attesting to his severe sinus problem and several pages of excerpts from T.O. 31-1-141-1, again the pages 2-11, 2-12, and 2-13, the section on radio frequency radiation did not get into the BVA files, pages that should have been in front of (R-183). On October 1, 1990 a Summary of Evidence and Adjudication Action Taken (R-200-202) the second paragraph of (R-201) clearly shows that the rating officer is confusing his *accidental exposures* as he has clearly described, by personal statements and T.O. 31-1-141-1. Basic Electronic Technology to atmosphere testing of nuclear weapons, the occupation of Hiroshima or Nagasake, Japan, from September 1945 until July 1946, or other activities as claimed. The following radiogenic disease mentioned, imply that if it isn't cancer it isn't caused by radiation (3.309(d)(2)(i) thru (xiii)). The immediate and delayed effects caused by ionized radio frequency exposure and injury to the body systems doesn't come close to the ionized radiation as a result of atmospheric testing in identity. The Atomic Radiation referred to in this claim is from a glass electronics tube (CRT) and the reference to Atomic Radiation is the heading referred to on pages (R-184 and R-325), the isotope in the glass tube ionizes the gas within the tube creating radon, which is the reason for including (R-229-237) and (R-124). Radio frequency radiation referred to in this claim is referenced on page (R-319-322). This is where the ionized dc current is developed (the current [passes through the CRT] thus the current

becomes ionized). In lay terms, I believe the above is accurate; however, there is a major difference between radiation from atmospheric testing and radio frequency radiation. On 1/28/91, 2nd paragraph, the veteran states his claim that his respiratory problems are caused from the atomic radiation (as defined in T.O. 31-1-141-1).

During his rating evaluation of 12/26/90 (R-244) he explained to Dr. Crowder how he was exposed and injured by the radiation accidents, and Dr. Crowder's reply was "I have never heard of such a thing." He was really negative about the veteran's problems and their claimed cause. It shouldn't be so difficult to understand that these exposures do occur. If the individual has studied much about radiation, even the field of x-ray, which is just another step up the ladder from radar, using the same power sources (electromagnet current). One would think that the good doctor would be somewhat familiar with potential radiation accidents.

38 C.F.R. Ch. 1 [7-1-90] (d) p. 232

On 6/17/91 (R-292) second paragraph, the veteran has tried to explain to the hearing officer the radio frequency issue and on (R-297) Mr. Manning clearly asks, "You were never exposed to any nuclear tests?" and the veteran explains, "No, no. Totally different type of exposure." This clearly shows that the VA had some major confusion regarding the veteran's atomic radiation exposure and the radio frequency radiation exposure. On (R-381) Reasons for Decision, second paragraph does state that there is no provision of laws to cover this type of radiation exposure, or at least that is what he gets from the wording used. The VA rating officials are working

from 38 CFR Ch. 1 (7/1/90 edition) 312, Diseases specific to radiation-exposed veterans and 3.311b Claims based on exposure to ionized radiation. The veteran believes that his claims should follow the category following the above (iii). Other exposure claims pg. 235. Evidence of any other effects radiation exposure may have had on the veteran (v) page 237 (e) Factors for consideration. Factors to be considered in determining whether a veteran's disease resulted from exposure to ionizing radiation in service.

38 C.F.R. Ch. 1 § 3.311(b) p. 237

(1) The veteran states that the VA has failed to use the proper identification as to his radiation exposure and has failed to apply the rules from 38 C.F.R. for deciding and rating his claim and hereby asks the court to make those determinations and decisions.

(2) The relative sensitivity of the involved tissue to induction, by ionizing radiation, of the specific pathology;

(3) The veteran's gender and pertinent family history;

(4) The veteran's age at the time of exposure;

(5) The time-lapse between exposure and the onset of the disease; and

(6) The extent to which exposure to radiation, or other carcinogens, outside of military service may have contributed to the development of the disease.

(f) Adjudication of claim. The determination of service connection will be made under the general applicable provisions of this part, giving due consideration to all evidence of record, including any opinions provided by the chief medical director or an outside consultant, and to the evaluations published purs ant to 1.17 of this title. With regard to any issue material to consideration of a claim, the provision of 3/102 of this title apply.

(h) Service connection otherwise established. Nothing in this section will be construed to prevent the establishment of service connection for any injury or disease otherwise shown by sound scientific or medical evidence to have been incurred or aggravated during military service. (Authority: Pub. L. 98-542).

1960 Sinusitis Rating

38 C.F.R. Ch. 1 [7-1-93 Edition] § 4.88a p. 389,
6200 – Otitis, Chronic.

Whether the medical records support a service connection for his right ear problem. On R-32 on 1-6-56 the General Service Separation Physical examination reports "External Otitis since 1952." While in the USAF and following his discharge his ear problem was treated in the course of sinusitis treatment, without notation to the ear problem, identical to his chest cold treatment. The otitis problem has been confused with side face pain, Tempromandibular Joint (TMJ) syndrome. However, pain complaints have normally been made to the right ear region (R-107, 7-14-73), right scalpular area (R-109, 11-30-75) pain in the right ear region, defective hearing right ear (R-121, 8-15-76), otitis media right (R-129, 11-18-85), TMJ,

x-ray, negative (R-161, 11-21-85), TMJ, tscan (R-242, 12-25-90), ear pain (R-244, 12-26-90), no. 8 mass in right submandibular area (R-539, 5-12-92), jugular node next to submandibular gland (R-538, 9-8-92), soft modible mass (right) neck. This problem like all others has shown increased pain and identity.

Administrative Error 1960

38 C.F.R. Ch. 1 [7-1-90] § 4.97, 6513 – Sinusitis, maxillary, chronic, post-operative.

(1) Whether the VARO, Montgomery, AL erred by issuing a rating of 0% for his sinusitis condition on 1/13/60 (R-62), the veteran's military service medical reports (R-22, 28, and 30) each report severe and repeated episodes of chronic sinusitis with headaches, sore throat, and epigostic pain. Furthermore, he provided statements from his wife, landlord, and a coworker (R-42, 44, and 45). The hospital operating record of 5/16/59 (R-216) describes the Caldwell-Luc surgery that was done by Dr. Odess. Based on the above, he feels that he should have been rated at 10% which is described in Rating Schedule Provisions of 4/19/91 (R-274) "Moderate, with discharge or crusting or scabbing, infrequent headaches is rated 10%." US Code 38.

In the rating of 1/13/60, the VARO failed to notify him of his rights to appeal, therefore, he did not appeal their decision.

The veteran provided several statements and affidavits from co-workers (R-218, 219, 220, 221, and 222) attesting to his continuing bout with chronic sinusitis, at

the above or increased severe nature to the VARO and BVA prior to 3/18/94 decision.

The veteran could not recall and had no reports in his file of the office visits from 1960 to 1971 in Birmingham and 1971 to 1990 in Knoxville for his sinus condition, even though there were several.

38 C.F.R. Ch. 1 [7-1-90] § 4.97, 6513 – Sinusitis, maxillary, chronic, post-operative.

(2) Whether Dr. Crowder, VAOPC, Knoxville undermined petitioner's condition of a chronic sinusitis problem of a severe nature in his written evaluation dated (R-244), December 26, 1990, Dr. Crowder does not place any significance to his radical surgery (Caldwell-Luc) done in 1959, even though it was of significant importance. He states, "He does not have any record of that," however, the scar is there and the veteran believes the significance of this surgery should have carried a positive significance in the evaluation statement. The veteran gave him a fairly complete overview of his history of chronic sinusitis. Dr. Crowder states that "He has been here on several occasions by Dr. Russell" then contradicts himself by the following statement: "He has had no treatment for his sinus here." On 9/25/90 the VAOPC x-ray report states, "The right maxillary sinus is totally opacified," and had been given a prescription of ibuprofen on 2/28/90 (363) for headaches by Dr. Russell. While these reports of Dr. Russell's evaluation are not in the lower court's case file, they were in the VAOPC, Knoxville file when Dr. Crowder wrote his evaluation report. Dr. Crowder states, "He sniffs some water up his nose to clear it out." The veteran takes issue with the casual

attitude Dr. Crowder expressed during the evaluation R-250 thru 252 dated 2/4/91, specifically to his quoted above statement on R-396 lines 15 thru 23 dated 10/8/91.

On February 4, 1991 the veteran wrote the VARO referencing Dr. Crowder's evaluation report, commenting on its contents. (R-250 thru 252). On 3/7/91 he did receive a 10% rating for sinusitis retroactive to 9/18/90, effective 10/1/90, the same rating denied service connection for bronchitis due to radiation exposure (R-262 and 263). On March 25, 1991 he filed a Notice of Disagreement and requested a personal hearing.

The veteran believes that his rating for sinusitis and lack of rating for bronchitis is significantly denied because of Dr. Crowder's minimizing and simple evaluation.

The Statement of the Case R-272, 273, and 274 describes the rating of 0% – 10% – 30% and 50%. This reference clearly shows that the rating would have been more favorable to the veteran if Dr. Crowder's evaluation had been correctly written. Later evaluations and surgery support that claim. Further examinations by Dr. Russell, VAOPC, Knoxville, 9/8/92 (R-538) reports chronic sinusitis, crusting and on 9/22/92 (R-537) reports chronic sinusitis and nose lesions. The rating for severe sinusitis with frequently incapacitating recurrences, severe headaches, purulent discharge or crusting reflecting purulence is rated 30% (R-274) and that is where the veteran feels that he was as of 6/26/90, date this claim was filed.

38 C.F.R. Ch. 1 [7-1-90] § 4.97, 6600 – Bronchitis, Moderately Severe

(3) Whether the VARO, Nashville erred on rating of 10/15/91 (R-390) by failing to give a rating for bronchitis secondary to his long history of sinusitis as noted in (1) above. This condition was added to his claim on 4/9/91 (R-269). While diagnosis of bronchitis was not noted on military service records, post nasal drip, sore throat (R-22, 28, and 30) are reported. In 11/30/75 (R-109) is the first report of record of this disease. On this report the impression states, "sounds like chronic bronchopulmonary trouble on the right," on 12/1/75 (R-110 & 111) chronic bronchitis and severe, chronic, sinusitis is reported on 8/16/76 (R-121, 122, and 124) chronic bronchitis is again diagnosed. The veteran states that he never has a sinus cold without it turning into a chest cold. However the medical professionals do not always address the chest cold. 38 C.F.R. Ch. 1 (7/1/93 edition) Pg. 393. Bronchitis, chronic, moderately severe: persistent cough at intervals throughout the day, considerable expectoration, considerable dyspepsea on exercise, rages throughout chest, beginning chronic airway obstruction, rating 30%.

Lipomas

Fibromyalgia – 5025

(4) Whether there is a link between the veteran's soft tissue problems and the high voltage DC current shock/burn and ionized radio frequency current shock/burn. While the petitioner has steadfastly maintained that the soft tissue (lipomas) and other medical problems are caused by exposure to radiation or did contribute to the

severity of the disease, maybe if only to increase the pain level, the support of a doctor's statement is unattainable for a positive medical evidence Dr. Poteet (R-560) states as close as one can, "I cannot confirm Mr. Staten's statement that his multiple recurrent tumors are a result of this radio frequency. However, I cannot disprove his claim for the same reason." The petitioner is asking this court to review and decide on the issue, while he continues to make his claim, the strongest supporting evidence and other medical reports post dates the BVA decision of 3/18/94.

The significance of the majority of his mental and physical health problems (R-99, 116-120, 387, 461, 486, 533, 539, 540, 555) being pronounced to the upper right quadrant of his body, (from right hand, shoulder, thorax, chest, neck, and right side of head) per medical reports throughout his life, certainly lends credibility to his claim of ionized radio frequency shock/burn injury as described on (R-319, 563, 455, 456, 565, 569).

The petitioner does have a second line of tissue problems that travels from under right arm, to right groin, across to left hip (R-96). Note "multiple (2) benign lipomas (from the abdominal wall) (7)" It has been explained that the (7) represents lipoma formations, this line continues down the left leg. Again there are multiple areas in this line, diagnosed post dating the BVA decision of 3/18/94.

9209 – Depression – Definite impairment of social and industrial adaptability

Whether the diagnosis of Dysthymia, second type, late onset and major depression, recurrent, moderate (R-581) are related to the ionized radio frequency shock/

burn injury. (R-319, 2-73). 38 C.F.R. Ch. 1 Pg. 415 Major Depression, definite impairment of social and industrial adaptability. 30%. The veteran contends that his blunted mood and Dysthymia and affect is a result of his injury- Ref 1/21/93 Pg. 1 VAMC report.

Whether the material in appendix 26-32 expresses an attitude of malpractice. The veteran had been attempting to get an evaluation and diagnosis to rule out the question of radiation exposure as recommended by the VAOPC doctor, Lewis T. Howard, M.D., CMO (R-481). The veteran had been referred to the VAMC for evaluation and had tried on previous occasions to get an appointment with the mental health clinic for the R/O evaluation. This medical clinic didn't seem to want to cooperate with the veteran and had given him the runaround on previous occasions. The veteran had obtained copies of his medical records on several occasions from the VAM, Nashville, and on the medical report for 1-21-93, had only received the front page of the report. On July 2, 1998, he received a copy of the latest rating decision of 6-8-98. At this point he requested from the VARO a copy of his claim file. In this file he found a copy of a report filed by Doctor Michael W. Propper, M.D., Psychiatry Department. Inside this report was a reference to a report filed by a Doctor Dan Boyd, M.D. Doctor Propper quotes a paragraph from Dr. Boyd's report that he had not seen before. After several letters and telephone calls, he finally received the complete (front and back) report of 1-21-93. On the reverse side of this report is the report written by Dr. Boyd (Ref. Appendix 28). The surprising part of this report is the negative statement "possible elements of malingering and exaggeration for

SC pay." The veteran wasn't seen by this doctor on this day or previously and he fails to see where the reports referred to by Dr. Boyd given cause for such a negative reference. The veteran has since brought this issue up with the VAMC administrative assistant in the CMO's office and the negative statement has been struck from his record. However, this was done on 3-3-99 and going back through the years from 1-21-93, the statement was in the records while his claim was denied, denied, denied by the VARO, BVA, COVA and essentially by the U.S. Court of Appeals for the Federal Circuit, since they declined to review his claim for lack of jurisdiction (this issue was addressed in this latest court brief).

The veteran contends that Dr. Crowder's narrow evaluation and this negative report both contributed significantly to his claim being denied. The medical records subsequent to this 1993 report show a much different picture in favor of the veteran than these two doctor's reports show. The veteran admits that his speech and personality when speaking to the medical profession is blunt. However, this is an element of his pain and frustration caused by dealing with his medical problem for the forty plus years as the medical records show.

The veteran doesn't mean to imply that the many people have conspired to deny his claim. It's just that a few important people in strategic places have filed reports that have led other reviewers to the denial conclusion and he wishes to stress that the reverse side of the report of 1-21-93 was kept from him for all those years.

The veteran was declared disabled in 1994, for insurance coverage purposes by Admin. Law Judge retroactive to 2-15-91.

CONCLUSION

1. The veteran claims that the soft tissue absorbed energy creating lipomas and thickened tissue at the back of the head and neck to the right side to center line. The cervical spine and other soft tissue could have also been damaged. The veteran understands that this is offering medical fact and speculation, however, he has provided scientific and technical literature supporting his claim for damaged tissue resulting from his radiation exposure. Also he has had multiple tumors removed by surgery in the line of hand to head and currently has others and has severe pain in this same line. Also, in the second line from right shoulder to left foot as medical records show.

As one would understand that a high voltage current would travel from contact point (right hand) up the arm it is contained by the diameter of the arm, then at the shoulder it would (should) expand out, thus as the side of the head would be in contact with the grounded equipment. The current traveling from the shoulder would expand out in the right thorax chest, drawn back into the more narrow neck and exit the body where the head is in contact with grounded frame and would allow the current to exit.

2. All tissues and organs in this line could have been damaged by the heat created by this energy as noted in T.O. 31-1-141-1. R-319-325. The hollows of the sinus,

throat, esophagus, bronchial tubes, and right lungs could have been damaged by the first accident (atomic radiation). Then the tissue of these systems could also have been damaged by the energy from the radio frequency current. This is a logical conclusion and not a conclusion of speculation. His service medical record reporting examination of the pain that had started in the area of the heart, esophagus [R-23-29] and the thorax chest. There is a continuous medical record reporting the examinations and surgery of benign lipomas in this first line and second line as explained in other parts of this petition.

3. The veteran asserts that had the reviewers of his claim not been exposed to the narrow and negative medical reports, it could have found grounds to decide a grounded claim.

4. The veteran has received since 3/18/94, a statement letter from his former First Sergeant and detachment Commander (appendix). This shouldn't have been necessary except for the issues in 3 above. This should confirm his claim and further establish a well-grounded claim.

Respectfully submitted,

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IN THE APPEAL OF
CARROL C. STATEN

[LOGO]

BOARD OF VETERANS' APPEALS
WASHINGTON, D.C. 20420

DOCKET NO. 92-13-049) DATE
) MAR. 18, 1994

THE ISSUES

1. Entitlement to an increased rating for sinusitis, currently evaluated at 10 percent disabling.

2. Entitlement to service connection for bronchial and lung conditions.

3. Entitlement to service connection for multiple lipomas.

4. Entitlement to service connection for degenerative disc disease of the cervical spine.

5. Entitlement to service connection for diverticular disease.

6. Whether the January 13, 1960, rating decision of the agency of original jurisdiction contained clear and unmistakable error.

REPRESENTATION

Appellant represented by: Disabled American Veterans

ATTORNEY FOR THE BOARD

Patrick J. Costello, Associate Counsel

INTRODUCTION

This matter came before the Board of Veterans' Appeals (hereinafter the Board) on appeal from August 1990 rating decisions of the Department of Veterans Affairs (VA) Regional Office (RO), in Nashville, Tennessee, which denied the veteran's claim for service connection. The RO did however increase the veteran's disability rating for sinusitis. The notices of disagreement were received in September 1990, and March 1991. Statements of the case were issued in October 1990, and April 1991, and substantive appeals were received in May and June 1991.

In June 1991, the veteran and his representative appeared and offered testimony at a hearing on appeal conducted at the RO. The hearing officer rendered a decision in September 1991 that confirmed and continued the prior rating action. A supplemental statement of the case was thereafter issued in September 1991. Additional rating decisions were issued in October and November 1991. A supplemental statement of the case was issued in December 1991. The veteran and his representative reappeared and offered testimony at a hearing on appeal conducted at the RO in January 1992. In April 1992, the hearing officer confirmed and continued the prior rating actions. A supplemental statement of the case was issued in May 1992. The appeal was received and docketed at the Board in July 1992.

The veteran has been represented throughout this appeal by the Disabled American Veterans, which submitted additional written argument to the Board in March 1993. This case is now ready for appellate review.

The veteran had active military service from February 1952 to January 1956.

CONTENTIONS OF APPELLANT ON APPEAL

The veteran contends that the rating action of January 13, 1960, contains clear and unmistakable error, and that the rating assigned did not adequately reflect his sinusitis condition. He asserts that the RO erred which it failed evaluate his condition more disabling, and thus requests that he receive retroactive payment of benefits for the period of 1960 through 1990.

He further avers that RO erred when it failed to grant service connection for his pulmonary condition, multiple lipomas, and diverticular disease. He asserts that these conditions were a result of his exposure to cobalt and radium filled radio tubes while in service. Moreover, he states that his proximity to radar equipment on the flight line contributed to his incurrence of these illnesses.

DECISION OF THE BOARD

The Board, in accordance with the provisions of 38 U.S.C.A. § 7104 (West 1991), has reviewed and considered all of the evidence and material of record in the veteran's claims file(s). The Board has determined that only those items listed in the "Certified List" attached to this decision and incorporated by reference herein are relevant to

this decision and incorporated by the veteran's claim. Based on its review of the relevant evidence in this matter, and for the following reasons and bases, it is the decision of the Board that the veteran's claim concerning clear and unmistakable error is not well-grounded. Additionally, it is also the decision of the Board that the claims for service connection for bronchial and lung conditions, multiple lipomas, and diverticular disease are not well-grounded.

Furthermore, it is the decision of the Board that the preponderance of the evidence is against both an evaluation in excess of 10 percent for sinusitis, and a grant of service connection for degenerative disc disease of the cervical spine.

FINDINGS OF FACT

1. All relevant evidence necessary for an equitable disposition of the veteran's appeal has been obtained by the agency of original jurisdiction.

2. Service medical records are negative of any findings of or exposure to radiation.

3. Service medical records are negative for treatment of a bronchial and lung condition, multiple lipomas, degenerative disc disease of the cervical spine, and diverticular disease. These conditions did not appear on the record until many years after his release from the military.

4. The January 13, 1960, rating action was based upon current medical evidence of the veteran's sinusitis condition; the RO applied then current regulations and statutes in effect to the evidence presented by the veteran.

5. The veteran has a chronic sinus condition evidenced by sniffing some water up his nose to clear his sinuses out. The veteran self-medicates, and x-rays of the right maxillary sinus are completely opacified, the nasal passages are clear, but he sounds slightly congested.

6. Neither an exceptional nor unusual disability picture has been presented so as to render impractical and application of the regular schedular standards.

CONCLUSIONS OF LAW

1. The criteria for an evaluation in excess of 10 percent for sinusitis have not been met. 38 U.S.C.A. §§ 1155, 5107 (a) (West 1991); 38 C.F.R. §§ 3.321(b)(1), 4.1, 4.2, 4.7, 4.10, Part 4, Diagnostic Code 6513 (1993).

2. The claim for entitlement to service connection for bronchial and lung conditions is not well-grounded. 38 U.S.C.A. §§ 1101, 1110, 1112, 1113, 5107(a) (West 1991); 38 C.F.R. §§ 3.307, 3.309 (1993).

3. The claim for entitlement to service connection for multiple lipomas is not well-grounded. 38 U.S.C.A. §§ 1101, 1110, 1112, 1113, 5107(a) (West 1991); 38 C.F.R. §§ 3.307, 3.309 (1993).

4. The claim for entitlement to service connection for diverticular disease is not well-grounded. 38 U.S.C.A. §§ 1101, 1110, 1112, 1113, 5107(a) (West 1991); 38 C.F.R. §§ 3.307, 3.309 (1993).

5. The veteran's degenerative disc disease of the cervical spine was not incurred in or aggravated by active service. 38 U.S.C.A. § 1110, 1131 (West 1991); 38 C.F.R. § 3.303 (1993).

6. The veteran's claim that the January 13, 1960, rating decision of the agency of original jurisdiction contained clear and unmistakable error is not well-grounded. 38 U.S.C.A. §§ 1101, 1110, 1112, 1113, 5107(a) (West 1991); 38 C.F.R. §§ 3.307, 3.309 (1993).

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

I. Clear and Unmistakable Error

The veteran contends that he is entitled to a compensable rating for his sinusitis condition, with an effective date from 1960, based on clear and unmistakable error in the initial VA disability determination. However, the initial question for resolution is whether the veteran has submitted a well-grounded claim in accordance with 38 U.S.C.A. § 5107 (West 1991), and *Murphy v. Derwinski*, 1 Vet.App. 78 (1990). In order to determine whether the veteran has submitted a plausible, well-grounded claim, we must first determine what is required for a valid clear and unmistakable error claim.

The United States Court of Veterans Appeals has defined clear and unmistakable errors as errors that are "undebatable, so that it can be said that reasonable minds could only conclude that the original decision was fatally flawed at the time it was made." *Russell v. Principi*, 3 Vet.App. 310, 313-314 (1992). "A determination that there was 'clear and unmistakable error' must be based on the record and the law that existed at the time of the prior AOJ or BVA decision." *Id.* at 314. There must be more than a disagreement as to how the facts were weighted or

evaluated, and the error must be outcome determinate. *Id.* at 313.

The veteran alleges that clear and unmistakable error was present in the 1960 decision because the same symptoms detected in 1960 were also present when he was re-evaluated at 10 percent disabled in 1991. He states that those symptoms were initially ignored. The veteran does not contend that this evidence was not before the adjudicator, nor that statutory regulations or provisions were incorrectly applied. He merely asserts disagreement with how the RO evaluated the facts before it. In accordance with *Russell v. Principi*, 3 Vet.App. 310 (1992), and more recently *Newman v. Brown*, 5 Vet.App. 99 (1993), we find that no valid claim of error as to this claim has been raised, and hence, the claim is not plausible nor well grounded.

II. Service Connection for Bronchial and Lung Conditions, Multiple Lipomas, and Diverticular Disease

The appellant also appeals the RO's actions which have repeatedly denied service connection for the above named conditions. In essence, the RO stated that the veteran's conditions were not a result of or proximately caused by exposure to radiation. The RO also noted that these disabilities were not those associated with exposure to radiation under the provisions of the law. Also referenced by the RO was the fact that the veteran was not exposed to radiation as a result of atmospheric exposure or the occupation of Japan around the nuclear holocaust areas. Yet, before the topic of service connection may be discussed, the initial question for resolution in this case is

whether the appellant has submitted a well-grounded claim in accordance with 38 U.S.C.A. § 5107 (West 1991), and *Murphy v. Derwinski*, 1 Vet.App. 78 (1990). Upon review of the claims file, we find that this requirement has not been satisfied.

Per 38 U.S.C.A. § 5107 (West 1991), and subsequently *Tirpak v. Derwinski*, 2 Vet.App. 609 (1992), a well-grounded claim requires more than just a mere allegation. The appellant in this case must submit supporting evidence that would justify the belief that the claim is plausible. In this instance, the appellant asserts that the veteran's disabilities were caused by his exposure to broken radio tubes which contained cobalt and radium. He also claims that he was exposed to radiation from the radar equipment used on the flight lines. To support his claim, he offered copies of an Air Force radio user's manuals and government-produced pamphlets on radiation exposure. The veteran highlighted the safety precautions needed when handling radio equipment, and the dangers involved in exposure to radiation and x-rays. From this material, the veteran concluded that he was exposed to radiation, and said radiation has caused his various disabilities.

However, the record does not contain any evidence corroborating the appellant's claim. Such statements by the appellant are speculative and would not "justify a belief by a fair and impartial individual that the claim is well grounded." *Ibid.* While we do not doubt that he is sincere in his belief that he was previously exposed to radiation, he is not qualified to offer such an opinion. *See Espiritu v. Derwinski*, 2 Vet.App. 492 (1992). Moreover, mere contentions of the appellant without supporting evidence do not

constitute a well-grounded claim. *Fields v. Derwinski*, U.S. Vet. App. No. 90-933 (Dec. 2, 1991); *King v. Brown*, U.S. Vet. App. No. 92-709 (Apr. 20, 1993).

III. Service Connection for Degenerative disc disease of the Cervical Spine

In accordance with 38 U.S.C.A. § 5107 (West 1991), and *Murphy v. Derwinski*, 1 Vet. App. 78 (1990), the appellant has presented a well-grounded action in regards to his claim for service connection for degenerative disc disease of the cervical spine. The facts relevant to this appeal have been properly developed and the obligation of the Department of Veterans Affairs (VA) to assist the veteran in the development of his claim has been satisfied. *Id.*

Under 38 U.S.C.A. § 1110, 1131 (West 1991), compensation will be provided if it is shown that the veteran suffers from a disease or injury incurred in or aggravated by service. In addition, service-connection may be granted for any disease diagnosed after discharge, when all of the evidence, including that pertinent to service, establishes that the disease was incurred in service. 38 C.F.R. § 3.303(d) (1992). Service medical records show that the veteran was not treated for any type of back pain or injury. The veteran performed his military and personal activities with no restrictions. His end-of-service physical was negative for any complaints, residuals, or abnormalities that might be associated with a degenerative disc disease of the cervical spine.

The veteran then requested service connection for his disability in June 1990. In his letter to the VA, the veteran claimed that his disability had existed since service, and

inferred that his service caused his disability. In the alternative, the veteran asserted that the degenerative disc disease was a result of exposure to radiation. Letter to the VA, undated. While the veteran has claimed the existence of the disability since service, he has not provided evidence that would link his current disability with his service. There is only his statement in support of his claim. While we do not doubt that the veteran's claim is made in the sincere belief that his disability may be somehow related to his service, he is not medically qualified to offer such an opinion. That is, he has no medical training that would permit him to make a diagnosis of the cause of the current condition. *Espiritu v. Derwinski,* 2 Vet.App. 492, 494 (1992). Moreover, as a layman, the appellant is not qualified to proffer an opinion as to the definitive date of onset of his disability; such testimony would only be probative if it were proffered by a witness qualified as an expert. *Miller v. Derwinski,* 2 Vet.App. 578 (1992).

Thus, while the veteran has provided statements attesting to the chronicity of the disability, he has failed to provide evidence that would corroborate his claim. Furthermore, the veteran has unsuccessfully identified any persistent pattern, since service of spinal abnormalities. The evidence of record, including the veteran's statements and the medical documents, does not show post-service continuity of complaints, findings, or diagnoses of the residuals of the claimed disability so as to reasonably relate current complaints to a period of service ending many years earlier. Such chronicity ought to be found if the individual was suffering from a remarkable chronic

degenerative disc disease of the cervical spine since service.

Therefore, based on these findings and following a full review of the record, the Board is of the opinion that the veteran does not have a cervical spine disability that may be reasonably associated with his service in the U.S. Air Force.

IV. Increased Rating for Sinusitis

We find that the veteran has presented a well-grounded claim in accordance with 38 U.S.C.A. § 5107 (West 1991), and *Murphy v. Derwinski*, 1 Vet. App. 78 (1990). Disability evaluations are based upon the average impairment of earning capacity as determined by a schedule for rating disabilities. 38 U.S.C.A. § 1155 (West 1991); 38 C.F.R. Part 4 (1993). Separate rating codes identify the various disabilities. 38 C.F.R. Part 4 (1993). In determining the current level of impairment, the disability must be considered in the context of the whole recorded history, including service medical records. 38 C.F.R. §§ 4.2, 4.41 (1993). An evaluation of the level of disability present also includes consideration of the functional impairment of the veteran's ability to engage in ordinary activities, including employment, and the effect of pain on the functional abilities. 38 C.F.R. §§ 4.10, 4.40, 4.45, and 4.59 (1993).

The veteran initially received a noncompensable evaluation for sinusitis in 1959. Then, on the basis of the veteran's reopened claim for an increased disability evaluation, the RO assigned a 10 percent rating in March 1991. In its decision, the RO noted:

> The veteran has . . . problems with a sinus condition since 1971. Current VA examination indicates that the veteran relates sniffing some water up his nose to clear his sinuses out. The veteran states that he does not smoke. The veteran takes aspirin which is usually for his head situation. X-rays of the right maxillary sinus is completely opacified, compatible with examination, the veteran's nasal passages are clear, but the veteran sounds slightly congested. Impression is chronic sinusitis.

A noncompensable evaluation is warranted for chronic maxillary sinusitis with only x-ray manifestations and mild or occasional symptoms. A 10 percent evaluation requires moderate chronic maxillary sinusitis manifested by a discharge, crusting, or scabbing and infrequent headaches. A 30 percent evaluation requires severe chronic maxillary sinusitis manifested by frequently incapacitating recurrences, severe and frequent headaches, and a purulent discharge or crusting reflecting purulence. When there is either chronic osteomyelitis necessitating repeated curettage following a radical operation or severe symptoms after repeated operations, the disability will warrant a 50 percent evaluation. 38 C.F.R. Part 4, Diagnostic Code 6513 (1993).

Since the above rating decision, the veteran underwent a VA Compensation and Pension Examination in June 1992. The examiner wrote that there was "[s]ome tenderness over the right maxillary and frontal sinuses. Nasal mucous membrane is rather red and slightly swollen." The veteran has not proffered any additional evidence indicating a more debilitating condition. Moreover, the record is negative for any evidence that would indicate

that he is suffering from a more severe condition. That is, severe chronic maxillary sinusitis manifested by frequently incapacitating recurrences, severe and frequent headaches, and a purulent discharge or crusting reflecting purulence are not present. Since the indicators of a more severe condition have not been present, an increased rating for sinusitis is not warranted. 38 U.S.C.A. §§ 1155, 5107 (West 1991); 38 C.F.R. §§ 3.321(b), 4.1, 4.2, 4.10, Part 4, Diagnostic Code 6513 (1993).

Consideration has also been given to the potential application of the extraschedular evaluation provisions of 38 C.F.R. § 3.321(b) (1993). The evidence does not present such an exceptional or unusual disability picture as to render impractical the application of the regular schedular standards. Specifically, there has not been a demonstration of marked, interference with employment or frequent periods of hospitalization so as to render impractical the application of the regular schedular criteria.

ORDER

1. Entitlement to an earlier effective date for a compensable rating of sinusitis based upon clear and unmistakable error is denied.

2. Entitlement to service connection for bronchial and lung conditions is denied.

3. Entitlement to service connection for multiple lipomas is denied.

4. Entitlement to service connection for degenerative disc disease of the cervical spine is denied.

5. Entitlement to service connection for diverticular disease is denied.

6. Entitlement to an increased rating for sinusitis, rated at 10 percent, is denied.

[SEAL]

BOARD OF VETERANS' APPEALS
WASHINGTON, D.C. 20420

/s/ W.H. Yeager, Jr. M.D.
W. H. YEAGER, JR., M.D.

/s/ C.P. Russell
C. P. RUSSELL

/s/ Jack W. Blasingame
JACK W. BLASINGAME

["Certified" List Omitted In Printing]

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UNITED STATES COURT OF VETERANS APPEALS

No. 94-630

CARROL C. STATEN, APPELLANT,

V.

HERSHEL W. GOBER,
ACTING SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before NEBEKER, *Chief Judge*.

MEMORANDUM DECISION

Note: Pursuant to U.S. Vet. App. R 28(i), this action may not be cited as precedent.

NEBEKER, *Chief Judge*: The appellant, Carrol C. Staten, appeals from a March 18, 1994, Board of Veterans' Appeals (BVA or Board) decision which denied an increased rating for his service-connected sinusitis; found claims for bronchial and lung conditions, multiple lipomas, and diverticular disease to be not-well-grounded; and denied service connection for degenerative disc disease of the cervical spine. The appellant does not challenge in his pleadings the Board's determination that he did not properly raise a claim for clear and unmistakable error in a January 13, 1960, regional office (RO) decision. Accordingly, this claim is deemed abandoned. *See Bucklinger v. Brown*, 5 Vet.App. 435 (1993). Based upon the record on appeal and the briefs of the parties, single-judge disposition is appropriate in this case (*see Frankel v. Derwinski*, 1 Vet.App. 23 (1990)), and the Court will affirm the decision of the Board for the reasons that follow.

I. FACTS

The appellant had active service in the United States Air Force from February 1952 until January 1956. Record (R.) at 34. He is currently service connected for sinusitis, rated at 10% disabling. R. at 496-497. Other than treatment for his sinus condition, His service medical records, including his separation examination, do not reflect treatment for any of the other claimed disabilities and do not reflect any incident of radiation exposure. R. at 16-32. Since his application for benefits in 1990, the appellant has steadfastly contended that he was exposed to radiation from broken radio tubes and from radar equipment during service, and that this alleged exposure has caused the disabilities from which he now suffers. Outpatient treatment records reveal that the appellant has had several lipomas surgically removed (R. at 92, 96, 100-01, 119, 177); was involved in an automobile accident which damaged his cervical spine (R. at 102-04); has been diagnosed with degenerative disc disease of the cervical spine (R. at 107); has been diagnosed with chronic bronchitis (R. at 110-11); and has been diagnosed with diverticular disease of the colon. R. at 124, 127-28.

II. ANALYSIS

A. Sinusitis

The determination of a degree of a disability is a question of fact to which this Court applies the "clearly erroneous" standard of review. *McGrath v. Brown*, 5 Vet.App. 57, 60 (1993). Under this standard, the Court will not substitute its own judgment for that of the Board and will disturb the factual determinations only if there is

no "plausible basis" in the record to support them. *Gilbert v. Derwinski*, 1 Vet.App. 49, 52-53 (1990). Where a disability has already been service connected and the issue is entitlement to an increase in compensation, the most recent level of that disability is of primary concern. *Francisco v. Brown*, 7 Vet.App. 55 (1994).

The rating code for sinusitis is 38 C.F.R § 4.97 Diagnostic Code (DC) 6513 (1996). To warrant a rating of 30%, the condition must be severe, with frequent incapacitating recurrences, severe and frequent headaches, purulent discharge or crusting reflecting discharge. A rating of 10% is warranted for a moderate condition, accompanied by discharge, scabbing or crusting and infrequent headaches. The most recent VA examination in 1992 notes "some tenderness over the right maxillary and frontal sinuses. Nasal mucus membrane was rather red and swollen." R. at 479. The appellant's outpatient treatment records for the period covering February 1991 to April 1993 reflect that the appellant complained of sinus problems on only four occasions. None of these records notes symptomatology reflective of a 30% rating. R. at 360-68, 402-08, 478-79, 533-40, 550-51. The appellant testified that he has headaches "every few weeks," and has not offered any evidence of incapacitating episodes. R. at 297-99. Therefore, the Board's determination to affirm the 10% rating has a plausible basis in the record.

B. The Remaining Claims

Section 5107(a) of title 38, United States Code, provides: "[A] person who submits a claim for benefits under a law administered by the Secretary shall have the

burden of submitting evidence sufficient to justify a belief by a fair and impartial individual that the claim is well grounded." Generally, a well-grounded claim requires (1) medical evidence of a current disability; (2) medical or, in certain circumstances (not applicable here), lay evidence of incurrence or aggravation of a disease or injury in service; and (3) medical evidence of a nexus between an in-service injury or disease and the current disability. *See Caluza v. Brown*, 7 Vet.App. 498, 506 (1995), *aff'd per curiam*, 78 F.3d 604 (Fed.Cir. 1996) (table). This Court reviews de novo whether a claim is well grounded. *Grottveit v. Brown*, 5 Vet.App. 91 (1993).

The appellant contends that his pulmonary condition, lipomas, degenerative disc disease, and diverticular disease are the result of his exposure to radiation from broken radio tubes and radar equipment. No evidence appears in the record to confirm that the appellant was indeed exposed to radiation during the two incidents he alleges. The appellant conceded at a personal hearing in 1991 that he had no medical evidence which linked his conditions to radiation exposure, even if it occurred as alleged. R. at 295. The only physician to address this issue, Dr. Tony Poteet, was unable to render an opinion either for or against the appellant's claims. R. at 560-61. Without competent medical evidence to support his claim, the appellant's suppositions and hypotheses do not provide the required connection between a current condition and service. *Espiritu v. Derwinski*, 2 Vet.App. 492 (1992). The appellant has therefore failed to submit well-grounded claims for these conditions.

The Board found that the appellant's claim for service connection of degenerative disc disease was well

grounded, and proceeded to adjudicate, and deny, the claim on the merits. R. at 6-7. As discussed above, the appellant has failed to provide any competent medical evidence which links this condition to service. Therefore, the appellant's claim is not well grounded and the Board erred in reaching its merits. *See Edenfield v. Brown*, 8 Vet.App. 384 (1995) (en banc). The Court in *Edenfield* held that such erroneous decisions of the Board should be affirmed unless they result in prejudicial error to the appellant. *Edenfield*, 8 Vet.App. at 390. The Court holds that affirming the Board's decision denying the claim would result in no such error, as the result is the same.

Finally, the Court notes that while his appeal was pending before the Board, Mr. Staten submitted a letter to the RO seeking to add a claim for a mental health disability. R. at 572. He attached a letter from Dr. Patricia Lees, a psychologist in Tennessee. R. at 573-75. In this letter, Dr. Lees stated that the appellant suffers from major depression, conversion disorder, and somotoform pain disorder. R. at 574. While the Board did not state in its decision what action was taken on this claim, the Court trusts that the matter, having been first raised to the Board, was referred to the RO for initial adjudication. *See Suttman v. Brown*, 5 Vet.App. 127, 132-33 (1993); *EF v. Derwinski*, 1 Vet.App. 324 (1991).

III. CONCLUSION

The March 18, 1994, decision of the Board is AFFIRMED.

DATED: AUG 26 1997

Copies to:

Carrol C. Staten
8327 Corteland Drive
Knoxville, TN 37909

General Counsel (027)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

NOTE: Pursuant to Fed. Cir. R. 47.6, this order is not citable as precedent. It is a public record.

United States Court of Appeals for the Federal Circuit

98-7015

CARROL C. STATEN,

Claimant-Appellant,

v.

TOGO D. WEST, JR.,
Secretary of Veterans Affairs,

Respondent-Appellee.

ON MOTION

Before MICHEL, RADER and BRYSON, *Circuit Judges.*

RADER, *Circuit Judge.*

ORDER

(Filed June 23, 1998)

The Secretary of Veterans Affairs moves to waive the requirements of Fed. Cir. R. 27(e) and to dismiss Carrol C. Staten's appeal for lack of jurisdiction or, in the alternative, for an extension of time to file his brief. Staten opposes.

In 1994, the Board of Veterans' Appeals denied Staten's claims for service connection for various conditions and his claim for an increased rating for sinusitis. On August 26, 1997, the Court of Veterans Appeals summarily affirmed the Board's decision on the grounds that the Board's decision regarding the sinusitis claim had a plausible basis in the factual record and that Staten had

not submitted evidence to render his remaining claims well grounded. Staten appealed to this court.

Pursuant to 38 U.S.C. § 7292, not every decision entered by the Court of Veterans Appeals is appealable. Section 7292(a) provides that a party may only seek review of a decision of the Court of Veterans Appeals with respect to the validity or interpretation of any statute or regulation relied on by the court in making its decision. Further, except to the extent that an appeal presents a constitutional issue, this court may not review "(A) a challenge to a factual determination, or (B) a challenge to a law or regulation as applied to the facts of a particular case." 38 U.S.C. § 7292(d)(2). If an appellant's case does not meet these criteria, 38 U.S.C. § 7292(d) requires this court to dismiss the appeal.

Staten does not argue that the Court of Veterans Appeals misinterpreted a constitutional provision, a law, or a regulation in its decision. In his informal brief and response, Staten challenges the evaluation of the evidence and the application of the law to the facts of his particular case. Because this court has no jurisdiction to conduct such an inquiry, this appeal must be dismissed. *See Livingston v. Derwinski*, 959 F.2d 224, 225-26 (Fed. Cir. 1992). Therefore, Staten's appeal rests beyond this court's jurisdiction.

Accordingly,

IT IS ORDERED THAT:

(1) The Secretary's motion to waive the requirements of Fed. Cir. R. 27(e) is granted.

(2) The Secretary's motion to dismiss is granted.

(3) The Secretary's alternative motion for an extension of time to file his brief is moot.

(5) Each side shall bear its own costs.

FOR THE COURT

JUN 23 1998
Date

/s/ Randall R. Rader
Randall R. Rader
Circuit Judge

cc: Carrol C. Staten
Deborah A. Bynum, Esq.

s12

ISSUED AS A MANDATE: JUN 23 1998

NOTE: Pursuant to Fed. Cir. R. 47.6, this order is not citable as precedent. It is a public record.

United States Court of Appeals for the Federal Circuit

98-7015

CARROL C. STATEN,

Claimant-Appellant,

v.

TOGO D. WEST, JR.,
Secretary of Veterans Affairs,
Respondent-Appellee.

ON MOTION

Before MICHEL, RADER and BRYSON, *Circuit Judges.*

RADER, *Circuit Judge.*

ORDER

(Filed Apr. 26, 1999)

Carrol C. Staten moves for reconsideration of the court's order dismissing his appeal for lack of jurisdiction and for leave to file supplemental information with the court.* The Secretary of Veterans Affairs has not responded.

The supplemental information that Staten seeks to file with the court consists primarily of documents post-dating the Court of Veterans Appeals' decision that was involved in this case. That material is not part of the record on appeal. *See* Fed. R. App. P. 10.

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* Staten also states that he wishes to submit a lengthy brief. Staten's motion for leave to file that brief was granted in an earlier order.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The motion for reconsideration is denied.

(2) The motions for leave to file supplemental information are granted with respect to documents that were part of the record and denied with respect to documents that were not part of the record.

FOR THE COURT

APR 26 1999
Date

/s/ Randall R. Rader
Randall R. Rader
Circuit Judge

cc: Carrol C. Staten
Deborah A. Bynum, Esq.

1/21/93
2:50 PM

MHC DUTY OFFICER
REFERRAL AND HX OF COMPLAINT

Pt is a 62 yo separated wm who presented in triage/MHC c/o pain in his head radiating through his sinuses and into his right arm. He has undergone multiple surgeries for lipomas that he describes as very painful. His physical problems began at age 21 when exposed to radiation while in the service. He added that he received radio frequency burn to his right arm. Pt attributed his physical problems to these incidents. When asked, he c/o problems with every body system. Pt also reports feeling depressed, difficulty staying asleep, and periods of confusion (losing his way inside his house when he gets up at night). Pt one time mentioned that he is not sure whether the pain is real or in his head. Pt has been followed in Knoxville VAOPC and drove to Nashville to dissatisfaction with location in Knoxville.

Psychiatric HX

Pt denies a hx of psychological/psychiatric hx. However, he is currently taking Amitriptyline 25 mg per day but is unaware it is an antidepressant.

CDHX

Pt reports he is a very controlled drinker averaging 2 drinks 3 x per week between 4 and 5 o'clock.

family HX

Pt denies a hx of mental illness and substance abuse in his family.

Social HX

Pt born and raised in Walnut Ridge, AK. His mother died when he was 3 yo. He is the 6th of 9 children, he reports good relations with his family. Pt is a high school graduate and completed 2 years of college at the U of AL at Birmingham. Pt entered the U.S. Air Force 1952 and honorable discharged in 1956 at the rank of airman 1st class. Pt married in 1956 and is currently separated. Two children resulted from this marriage. Since discharge from the military, he has worked as an accountant but has been unemployed for the past 4 years due his medical problems.

Mental Status

Pt was cooperative with the assessment process. He did not display any problems with ambulation or gross motor control but moved in a slowed lethargic manner. Memory and cognitive functions were intact and was oriented x3. Pt denies SI/HI. He denies any hallucinations or delusions. Mood was dysthymic and affects was somewhat blunted.

Diagnosis

Axis I: Undifferentiated Somataform Disorder (provisional,

Axis II: Deferred

Axis III: None

Recommendations

Pt does not appear to be a risk to himself or others at this time. Due to the complexity of Pt's case and clarification of the validity of physical complaints, Pt is referred to the MHC resident.

Wayne Siegel Ph.D. Candidate
Psychology Intern

Carrole Young, Ph.D.

1-21-93

Chart reviewed – esp. Dr. Hoehn's note of 10/91 & pts 12/1/92 stack of papers in chart detailing his ailments (complete with color coded diagrams!).

I'd briefly spoked to him in waiting room when otologist saw him & he was asymptomatic for BP and I rec the FU for BP at local physician (sooner if symptomatic & explained symptoms). I called for pt at 4:00 pm but he'd already left. Based on above not & chart, I suspect somatization & somatoform disorder and possible elements of malingering and exaggeration for SC pay. Pt should cont RX at Knox VA MHC or local MHC.

Boyd, M.D.

10-18-91
Mental Health Clinic Resident I

Statten, Carol 383-28-0862

Subjective:

60 year old white male referred for vague reasons from medical clinic. Patient reports being very concerned about multiple somatic complaints related to past benign growths which he feels is related to exposure to radiation many years ago. In reviewing his chart he has had numerous ER visits for a variety of concerns and he has had suspected somatization disorder. He reports no previous psychiatric history or substance abuse in the past.

Medications:

Ibuprofen 600 mg TID
Verapamil 80 TID
Bronpheniramine BID

Past Medical History: Multiple Benign growth SP resection

Past Psychiatric History: None

Social History:

Accountant recently unemployed, sporadic work history the past 10 years (the economy), married x 34 years, two grown children.

Examination:

Moderately obese anxious white male, A&O*4, speech clear, mood/affect mildly anxious, though normal but preoccupied with multiple medical complaints ("I know

they're getting worse"), no SI/HI, Memory/concentration intact, judgement intact, insight fair.

Impression: Probably Somatization DO

Plan:

Will schedule psychological testing and RTC after testing. May benefit from supportive therapy.

Robert Hoehn, M.D.

12-21-92

GI gives multiple complaints. Has had several lipomas removed in past. Pt as had pain in head, neck, (cannot read) esophagus for 45 years. Wants something done thus requests that entire med record be accumulated and have his eligibility for SC on disability.

He has multiple lipomas (cannot read) general surgery several months ago. Felt urgent to have operation indicated. Referred to ENT for right submandibular lipoma.

Obese white male

Right small submandibular node or lipoma

Diagnostic Impressions:

1. Chronic Pain
2. Lipoma

Plan:

1. Keep ENT appointment

2. To Veteran Affairs for (cannot read) of medical records

3. CCR to pain clinic

(Cannot read) doctor's name.

Veteran's handwritten note in personal file at home.

1-18-93 Psychology – Mental Health
1-327-5398
H.D. closed today w/b open every day

Went to Nashville on 1-21-93, got the usual runaround. Asked to see a psychologist to discuss my medical problems (the R/O issue). I got into that clinic at 10:30 Central time. About 1:00 o'clock I talked to a young (intern) doctor Wayne Seigel. We talked for about ten minutes. Then I was sent back to the waiting room. Then he came back over and we went back to his private office again and he asked some personal questions about family history, education, employment, etc. Then I was sent back to the waiting room about 2:30. Was supposed to see the MD psychologist but never did get to see him. At 4:00 pm I decided that this was another runaround trip. I went downstairs to the admitting office and spoke with Mr. Billy Morrow. I showed him some of the charts of my medical history and the one on the RF and microwave

research. He suggested I let him make me an appointment with the nuclear clinic, Dr. Dodd, and then I would have an opportunity to show him the information that I have. He is supposed to send me some forms to fill out. Mr. Morrow called upstairs and spoke with Doctor Boyd who commented that he had just gone out to get me and I was gone. Mr. Morrow told him that I was there complaining about waiting all day to see the doctor and now has a long drive back to Knoxville (3 hours). The last patient had left the Mental Health Clinic at 2:30 p.m.

App. 33

William F. Storey
8210 West Maine Street
Belleville, IL 62233-2020

December 29, 1997

Ref: Carrol C. Staten vs. Veterans Administration

To Whom It May Concern:

This is to acknowledge that in late 1952 and early 1953, I was attached to Detachment 20, 3944th Radar Bomb Scoring Squadron, Birmingham Municipal Airport Birmingham, Alabama. My duties were Chief Clerk and First Sergeant of the unit.

During the above noted period, I recall an incident where broken radioactive electronic (Cathode Ray Tubes) tubes were discovered in a bin in the unit supply trailer. These broken tubes could have presented a health hazard to anyone spending any amount of time inside the trailer at this particular time. Also about the same time as the above accident, the trailer was moved to a position of about 35° counter-clockwise to the radar transmitting antenna to prevent exposure to personnel inside the trailer to microwave radiation energy.

I further acknowledge that a zero Defects attitude was strongly administered towards accidents reports that at that time might have been considered to be trivial or harmless, since there was strong competition within the Squadron and Group Headquarters of the Strategic Air Command for first place or near first place ratings, which this Detachment was awarded on several occasions,

largely because of minimum or *no* accidents and minimum or *no* unscheduled down time.

Furthermore, the security of the unit as established by higher headquarters was about as tight as it could ever have been. Confidentiality agreements were required of each member of the organization, background checks were made before security classifications (clearance rating) were handed out, a strict policy was administered, not to talk about your work except when it is in the line of duty and when you leave the service you must maintain your security commitment and do not discuss (divulge) your in service secrets.

12/30/97
T.M. Mulherin

"OFFICIAL SEAL"
THOMAS M. MULHERIN
NOTARY PUBLIC, STATE OF ILLINOIS
My commission expires February 7, 2001

/s/ William F. Storey
Name
30 December 1997
Date

Adam Wiley
Lt. Col. USAFR (Ret)
1288 West Crest Way
Monterey Park, CA 91754

To Whom It May Concern:

During the time I was serving as Commander of Detachment 6, 12th Radar Bomb Scoring Squadron, formerly Det 22, 3944th RBS Sq. (Strategic Air Command) at Rhein-Main Air Force Base in Frankfurt, Germany, one of my assigned airmen A/1c Carrol C. Staten, was involved in an accident regarding an electrical shock from high-voltage live wires or instruments connections during the preparation of radar trucks and equipment to be shipped with the detachment's movement to Orly Field, Paris, France on or about October 1-5, 1955. The current involved could have been ionized.

He was immediately taken to the Rhein-Main Air Base Hospital for required medical assistance. He was observed for several hours at the hospital by medical personnel and then released back to his unit several hours later. The Detachment was moved to Orly Field on or about the next few days.

I regret that I have no knowledge nor can I remember any further required medical assistance, for him although there was expressed concern for him by other airmen (enlisted men and officers).

I was transferred from this Detachment as its Commander and returned to the United States on or about November 15, 1955.

This statement may be used by subject individual for VA disability benefit.

Sincerely,

/s/ Adam Wiley
Adam Wiley

Date: Feb. 15, 1997

AW:mj
2/12/97